To the Members of the Task Force on Access Through Innovation of Legal Services:

On behalf of the California Defense Counsel (CDC), we appreciate the opportunity to comment on ATILS concepts for regulatory reform options. CDC is a statewide advocacy organization for civil defense practitioners, made up of the combined membership of the Association of Defense Counsel of Northern California and Nevada, and the Association of Southern California Defense Counsel. CDC is the only organization exclusively dedicated to representing civil defense lawyers before the California Legislature, Judicial Council of California, and regulatory agencies.

Rather than comment on the 16 proposals individually, which the Request for Comment notes are intentionally contradictory in certain places, we prefer to submit our thoughts on the direction and concepts embodied in the report. At the outset, we believe that the report, which appears substantially based upon the Legal Market Landscape Report prepared by Professor Henderson, fails to make the case for such radical suggestions as opening up ownership of law firms to virtually any entity, and almost completely unfettered fee-sharing. In some cases, the Landscape Report and ATILS report actually support the opposite interpretation, that robust innovation is already occurring in the legal sector without the risks to consumers of legal services from these misguided proposals.

Respectfully, the ATILS report seems designed to support a predetermined position on the major recommendations. Throughout the report, the “pros” and “cons” of the various proposals are long on the supposed benefits of promoting a “one-to-many” change in the delivery of legal services, especially to low and middle-income consumers, with little to no recognition of the harm which could result from a move away from a human lawyer evaluating and counseling individual clients from a position of fiduciary duty.

The California Defense Counsel is strongly opposed to proposals embodied in the ATILS report on non-lawyer ownership and fee-sharing.

Justice Gap: The recommendations proceed from the premise that California is experiencing an enormous gap in access to justice, which can best be addressed by incentivizing technology innovators to expand their involvement in the legal sector. CDC recognizes that a justice gap exists in California and elsewhere, but some of the facts and statistics in the two reports suggest a profound lack of nuance and are frankly mystifying. At one point it is suggested, with little factual basis, that some twenty million Californians, half of the entire

population of the state, experiences a legal issue requiring a lawyer, *every year*. Although we are skeptical about this largely unsupported assertion, thoughtful discussions about how to narrow the justice gap require far more precision about the nature of underserved populations and the legal issues involved. In the civil arena, we recognize that defendants in such cases as unlawful detainer and collections often go unrepresented, and that large percentages of family law cases include at least one unrepresented litigant. But we are unaware of any suggestion that large percentages of personal injury litigants, for example, are unable to find lawyers. Ironically, it is precisely these types of cases, to which we would add class actions, which would be most attractive to the venture capitalists, hedge funds and others who would prioritize profit in the acquisition of law firms.

We believe that the State Bar should dive much deeper on the nature and extent of the justice gap, before recommending "solutions" which would be *most* attractive for the types of cases where the gap *least* exists.

Law by Algorithm: We are deeply troubled by the suggestion that California policy should encourage a "one-to-many" solution to solving the justice gap, through products incorporating artificial intelligence or other algorithm-based approaches. First, this will tend to perpetuate and institutionalize a two-tiered system of justice, where consumers with means will receive individualized counseling by human lawyers, and those with more limited resources can make do with computer apps. Algorithms do not recognize conflicts or feel any fiduciary duty or duty of loyalty to clients, and may contain the very kinds of implicit bias we are working so hard to train out of humans. Big data may well help solve many problems in society, including mobility and many others, but we should be very wary of suggestions that artificial intelligence can capably recognize and assist with the endless permutations in legal matters.

Innovation in the Legal Sector and Non-Lawyer Ownership of Law Firms: Implicit in the reports is the idea that if only non-lawyers could invest in and own law firms, innovation will occur and help move to a one-to-many model in the law. But the reports also document repeatedly how much legal innovation is occurring right now, a trend well-known to all lawyers. From legal research to electronic filing and storage, to trial preparation services, assistance with e-discovery and much, much more, technology is transforming the practice of law and related services, *right now*. Further, investments in legal technology are attractive already. Professor Henderson seems to recognize this. After chronicling the explosive growth of technology-based innovations in the legal market, he notes on Page 11 of the Landscape Report "Indeed, as discussed in Section 1.5 of this report, private investors see ample opportunity in the current legal market."

If all of this innovation is occurring already, what is gained by permitting non-lawyer ownership of law firms, and what might be lost? We believe that evidence for the theory that investment in legal technology is being impeded by the inability to "own the customer" is thin, as is the corollary that owning law firms will unlock investment not already occurring. On the other hand, allowing "Big Tech", hedge funds, and international accounting firms to own law firms carries with it incredible risks to consumers, including, but not limited to: continuing the concentration of market power in a small number of companies which have demonstrated a willingness to disrupt first and abide by the law later; placing short-term profits and returns to shareholders ahead of ethical duties to clients; favoring high-dollar cases over smaller, "People-law" cases, making the access to justice problem worse rather than better; encouraging the off-shoring of jobs presently performed in California; clouding issues of accountability for potential malpractice; exposing clients to the privacy breaches so frequent with large holders of data, and more.

The simple truth is that permitting ownership of law firms by Big Tech, hedge funds and the Big Four accounting firms is about benefiting rich people, not improving access to justice for low and moderate income consumers. It is about empowering people whose motto is to "ask forgiveness rather than permission", expecting policymakers to validate their actions *post hoc*.

Evaluations of Other Options: Almost completely absent from the reports and potential recommendations are evaluations of other, less radical options. These include better funding of legal aid, implementation of "Civil Gideon" programs, clarifying the UPL status for LegalZoom and similar providers, expanding self-help resources in courts, encouraging pro bono work by lawyers, conducting public education about when to seek legal assistance, and potentially many other approaches to the access problem.

Thank you for considering the views of the California Defense Counsel. We would be happy to answer questions or provide additional information as desired.